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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA ANCHORAGE

Great Divide Insurance Company)
)
 Plaintiff,)
v.)
)
Novakovich Enterprises, Inc.,)
Michael J. Novakovich &)
Linda Novakovich)
)
 Defendants.)

Civil Action No. _____

COMPLAINT FOR DECLARATORY RELIEF
(28 U.S.C. §2201 & 2202)

DEMAND FOR JURY TRIAL
(FRCP 38(b))

Great Divide Insurance Company (hereafter “Great Divide), by and through its counsel of record, Lynch & Associates, P.C., hereby asserts its complaint for declaratory relief as follows:

PARTIES

I

Great Divide is a corporation organized and existing under the laws of the State of North Dakota with its principal place of business in the State of Arizona.

II

Great Divide is authorized to transact business in the State of Alaska, has paid all required taxes and fees, has filed all required reports and has satisfied all other conditions precedent to bringing and maintaining this action.

III

Defendant, Novakovich Enterprises, Inc., (hereafter "Enterprises") was until December 31, 2011 a corporation organized and existing under the laws of the State of Alaska with its principal place of business in Anchorage, Alaska. Its business license has expired.

IV

Defendants, Michael Novakovich (hereafter "Michael") and Linda Novakovich (hereafter "Linda") were at all times relevant to this litigation residents and inhabitants of the State of Alaska.

V

Michael and Linda owned and operated Enterprises.

JURISDICTION AND VENUE

VI

This is an action for declaratory relief under 28 U.S.C. §2201 and for such additional and further relief as may be required to enforce a declaratory judgment in accordance with 28 U.S.C. §2202.

VII

This court has subject matter jurisdiction under 28 U.S.C. §1332, as the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between

citizens of different states with Great Divide being considered a resident of the State of North Dakota and all of the Defendants being considered residents of the State of Alaska.

VIII

In accordance with 28 U.S.C. § 1391(b)(1) and (2) venue in this district is appropriate as the Defendants, at all times relevant to this declaratory judgment action, were residents of this district and the events discussed in this declaratory judgment Complaint occurred in this district.

ALLEGATIONS IN SUPPORT OF DECLARATORY RELIEF

IX

Great Divide issued a general liability insurance policy to Enterprises, Michael and Linda identified as policy number GC318435 and renewed it at least five times.

X

The last policy issued by Great Divide was policy number GC318435-06 which was issued with a policy term of March 6, 2010 to March 6, 2011.

XI

On September 15, 2010 Michael and Linda, acting on behalf of themselves and Enterprises cancelled insurance policy number GC318435-06.

XII

A copy of insurance policy number GC318435-06 is attached as Exhibit 1 and the Cancellation Request for insurance policy number GC318435-06 is attached as Exhibit 2.

XIII

Insurance policy number GC318435-06 and its predecessors were occurrence policies which provided for \$1,000,000 general aggregate limit and \$1,000,000 products / completed operations aggregate limit.

XIV

Insurance policy number GC318435-06 and its predecessors provided coverage only for damages which the insured was legally obligated to pay that were caused by an occurrence where the actual property damage occurred during the policy period.

XV

Insurance policy number GC318435-06 and its predecessors excluded coverage for damage to the particular part of any of property that must be restored, repaired or replaced because the insured's work was incorrectly performed on it.

XVI

Insurance policy number GC318435-06 and its predecessors excluded coverage for damage to the particular part of any of the insured's work where the property damage was caused by the insured's work.

XVII

Insurance policy number GC318435-06 and its predecessor's limited coverage for the shareholders, officers and directors of a corporation to their liability as shareholders, officers and directors of the insured corporation.

XVIII

Insurance policy number GC318435-06 and its predecessors required the insured to provide Great Divide with written notice as soon as practicable of an occurrence or an offense which may result in a claim.

XIX

Sometime in 2008 and/or 2009 Enterprises, Michael and/or Linda installed and/or repaired the roof on the Creekside Plaza Mall (hereafter “Mall”) located in Wasilla, Alaska.

XX

The Mall was then and currently is owned by the Pedersen Family Trust (hereafter “Pedersen.”)

XXI

On December 13, 2010 a windstorm struck Wasilla, Alaska and damaged the roof on the Mall.

XXII

Enterprises, Michael and/or Linda received notice shortly after the December 13, 2010 windstorm that damage had occurred to the Mall roof.

XXIII

Enterprises, Michael and/or Linda did not promptly notify Great Divide or its agents of the windstorm and damage to the Mall.

XXIV

Great Divide was denied an opportunity to thoroughly investigate the loss at or shortly after it occurred.

XXV

Pedersen was insured by Liberty Northwest Insurance Company (hereafter “Liberty”).

XXVI

Liberty investigated the loss and agreed to pay for some but not all of the property damage.

XXVII

On or about August 17, 2011, Liberty made demand upon Enterprises, Michael and/or Linda to satisfy its subrogated interest for the amount it paid to Pedersen.

XXVIII

On December 10, 2013, Pedersen filed suit in the Superior Court for the State of Alaska, Third Judicial District at Anchorage with the caption of *The Pedersen Family Limited Partnership vs. Novakovich Enterprises, Inc., Michael Novakovich, Linda Novakovich, Novakovich Roofing, LLC, Matthew Novakovich, Tiffanie Novakovich and Liberty Insurance Northwest Insurance Corporation* with case number 3AN-13-10933 CI.

XXIX

A copy of the complaint in the underlying action is attached as Exhibit 3.

XXX

Pedersen seeks damages against Enterprises, Michael and/or Linda for in excess of \$100,000 exclusive of pre-judgment interest, costs and attorney fees.

XXXI

Insurance policy number GC318435-06 and its predecessors imposed a duty upon Great Divide to defend Enterprises, Michael and/or Linda against any suit seeking sums the

insured would be legally obligated to pay as a result of property damage to which the insurance policy applied.

XXXII

Great Divide does not owe a duty to defend and/or indemnify Enterprises, Michael and/or Linda from and for any and all claims arising from the damage to the Creekside Mall which are the subject matter of the claims made by Pedersen and/or the underlying litigation in State Court.

XXXIII

A real and substantial controversy exists concerning the interpretation of the Great Divide insurance policy number GC318435-06 and its predecessors as to whether Great Divide has a duty to defend and indemnify Enterprises, Michael and/or Linda with regard to the claims arising from the windstorm and the allegations in the underlying complaint.

XXXIV

A real and substantial controversy exists regarding whether or not Enterprises, Michael and/or Linda have complied with relevant policy conditions imposed on them by insurance policy number GC318435-06 and its predecessors.

XXXV

A real and substantial controversy exists regarding whether or not the insurance policy number GC318435-06 and its predecessors provide coverage for defense and/or indemnity for Enterprises, Michael and/or Linda.

PRAYER FOR RELIEF

Having set forth its complaint for declaratory relief, Great Divide prays for judgment as follows:

1) For a declaratory judgment determining that the Great Divide insurance policy number GC318435-06 and its predecessors do not provide coverage to Enterprises, Michael and/or Linda for defense against or indemnification for the claims asserted as a result of the windstorm and those set out in the underlying action.

2) That Enterprise, Michael and/or Linda and any or all of their successors, heirs and assigns are enjoined from attempting to enforce the defense and/or indemnity provisions of insurance policy number GC318435-06 and its predecessors.

3) That Great Divide be awarded its costs and attorneys fees.

4) That Great Divide be awarded such additional and further relief as the facts and law warrant.

DEMAND FOR JURY TRIAL

In accordance with Federal Rule of Civil Procedure 38(b) Great Divide requests a jury trial upon all issues that are triable by a jury.

RESPECTFULLY submitted at Anchorage, Alaska this 18th day of September, 2014.

Hozubin, Moberly, Lynch & Associates
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